

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A)
SHORELINES SUBSTANTIAL DEVELOPMENT)
PERMIT ISSUED BY THE CITY OF)
EVERETT TO GABBERT ASSOCIATES;)
SILVER LAKE COMMUNITY COUNCIL,)
Appellant,)
v.)
THE CITY OF EVERETT; GABBERT)
ASSOCIATES; PAULINE BOTHNE,)
Respondents.)

SHB No. 80-4

FINAL FINDINGS OF FACT
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal from the issuance of a substantial development permit by the City of Everett to Gabbert Associates, came before the Shorelines Hearings Board, Nat W. Washington, Chairman, Del Anderson, Robert S. Derrick, William A. Johnson and David Akana (presiding), at a hearing on May 1, 2, and 13, 1980, in Seattle.

Appellant was represented by its attorney Janet E. Quimby; respondent City of Seattle was represented by Walter C. Sellers,

1 assistant city attorney; respondent Gabbert Associates was represented
2 by its attorney, Raymond J. Petersen; respondent Pauline Bothne was
3 represented by her attorney, Ronald J. Trompeter. Olympia court
4 reporters Kim Otis and Alice Lott recorded the proceedings.

5 Having heard or read the testimony, having examined the exhibits,
6 and having considered the contentions of the parties, the Board makes
7 these

8 FINDINGS OF FACT

9 I

10 Silver Lake is a 102 acre fresh water lake located within the
11 jurisdictions of the City of Everett and Snohomish County. The
12 instant matter arises within the jurisdiction of the City of Everett.
13 The lake water level fluctuates 1-1/2 feet during each year.

14 II

15 The shores of Silver Lake are primarily used for single family
16 residences. There are a few multi-family dwelling units located on
17 the lake in the county's jurisdiction. The site of the instant
18 development is located on the southerly shores of Silver Lake at 11807
19 West Silver Lake Drive. A single-family residence with garage and out
20 building presently on the site will be demolished. North of the site
21 is an overnight recreational vehicle campground. Further to the north
22 is an 18 acre park maintained by the City. South of the site is a
23 small community beach park and single family homes. Upland from the
24 site is a trailer court. Snohomish County owns some land on the lake,
25 including a public boat launch.

26 FINAL FINDINGS OF FACT,
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III

On April 11, 1979, Gabbert Associates (hereinafter "permittee") applied for a substantial development permit for the construction of 45 condominium units, including 8 flat units, 24 feet high averaging about 70 feet from the shoreline, 6 townhouse units, 33 feet high, 180 feet from the shoreline, and 31 units in a 60 foot high, 5 story structure, 370 feet from the shoreline. Other construction includes a cabana of unspecified height, a 50-foot L-shaped dock, and 76 parking spaces. The proposal will be located on a 1.8 acre lot having 155 waterfront feet and extending about 527 feet upland. As conditions of the permit, the holder is to provide a 14 foot gravel shoulder and 4 foot asphalt pedestrian pathway on Silver Lake Road from the north side of the development to the south city limits; a 12.5% contribution to the total cost of the pathway from the north side of the development to the Silver Lake Park Gate; and an L.I.D. covenant for complete street improvements on Silver Lake Road. The proposed development is located within and is consistent with R-4 Zoning under the Everett Zoning Code.

IV

Respondent Bothne is the owner of the subject 1.8 acre site. Gabbert Associates is an architectural firm located within the City of Seattle which acted for and in behalf of the developers Stanley H. Young and Magne Hagen.

V

The proposed development as described above constituted the construction requested in the shoreline substantial development permit

1 application. The total proposal was considered by the responsible
2 official on August 8, 1979, prior to making the final declaration of
3 nonsignificance.

4 VI

5 The proposed development will not require retention of storm water
6 runoff from the property because discharge into a large water body,
7 i.e., Silver Lake, is available. This is said to make superfluous the
8 City's requirement of the submission of a drainage plan with the
9 shoreline permit application. A drainage plan would involve only a
10 calculation of on-site water storage required.

11 VII

12 The environmental checklist indicates that no discharge into
13 surface waters or any alternation of surface water quality will result
14 from the proposal. The proposed development will discharge runoff
15 into Silver Lake after passing through a filter or separator. The
16 discharge was not shown to have a significant adverse impact on the
17 water quality, however.

18 VIII

19 Answers on the environmental checklist alleged to be in error also
20 include areas of noise, light and glare, land use, population, traffic
21 hazards increase, police protection, recreational facilities, and
22 recreational opportunities. The areas of inquiry on the checklist
23 raise concerns but the answers and explanations given were not shown
24 to be in error, or the impact from the total proposal significant.

25 IX

26 The city did not send a copy of the completed checklist to
27

1 Snohomish County, which is the agency that has jurisdiction on a
2 portion of Silver Lake.

3 X

4 Some landfill is required under the units closest to the lake.
5 The drawings attached to the shoreline permit indicate the location of
6 the landfill but do not otherwise identify the source, composition and
7 volume of fill material.

8 XI

9 The density of the multi-family development is high compared with
10 single-family residential uses on the shorelines within the
11 jurisdiction of the city. There is no density limitation stated in
12 the shoreline master program. Under the zoning code, 60 to 80 or more
13 units could have been put on the site, which exceeds the 45 units of
14 the proposed substantial development.

15 XII

16 The approved and adopted Everett Shoreline Master Program
17 (hereinafter "SMP") was preceded by two documents which related to
18 land use at the instant site. The first of these was the Everett
19 Community Plan of 1972 (hereinafter "Halprin Plan") which places the
20 site in an "open space" or "special residential" category, and in an
21 area in which further significant residential development or increase
22 in residential densities was to be discouraged. The second document
23 was Everett's Open Space and Park Plan published after the Halprin
24 Plan and updated in 1978. The subject property is not affected by the
25 park plan. Zoning for the subject property preceded all of the above
26 documents.

Some policy statements in the Halprin Plan are in conflict with the zoning, which was not changed in light of such plan. The SMP took into account and adopts more of the policies of the Halprin Plan than does the zoning.

The proposed development presents some conflicts with the Halprin Plan, including the discouragement of development around water bodies and providing for setbacks from the water.

XIII

The SMP is the appropriate document upon which this development is to be evaluated. The various elements of the SMP were developed sequentially with each portion forming the basis of the succeeding levels. From goals and objectives came use activity policies; from use activity policies came environment designations; from environmental designations came specific use regulations. SMP, page I-12. Use activity policies are intended to achieve the goals and objectives; use regulations are mandatory requirements applicable to each specific use activity. SMP, page IV-1. Generally, goals, objectives and policies only provide very broad guidelines and are non-mandatory in nature. A project which does not meet the exact terms of a non-mandatory provision is not, for that reason alone, inconsistent with the SMP.

Periodic updating of the SMP is intended to keep it from becoming obsolete. SMP, page I-5. An annual report on the program was intended but not done. SMP, page I-8. With respect to residential development, the SMP use activity policy anticipates review of existing zoning and subdivision regulations for compliance with the

1 SMP. SMP, page IV-49. The lack of updating of the SMP or zoning
2 regulations does not affect the criteria adopted and approved in the
3 SMP. The provisions of the SMP override the zoning code or other city
4 regulatory ordinances. SMP, page I-8.

5 XIV

6 Public access is addressed throughout the SMP. The goals and
7 objectives provide for the establishment of standards and criteria for
8 public access on private property. Such access includes linkages
9 between public shoreline facilities via trails and paths, with other
10 recreational facilities. SMP, page II-10. All shorelines in the
11 city's jurisdiction are treated as shorelines of statewide
12 significance. SMP, page I-10. As such a shoreline, provision for
13 public access to publicly owned shorelines, is a consideration in
14 establishing preferred uses on the shoreline. SMP, page I-9. Such
15 public access contemplates developing access to and along shoreline
16 areas, parking and locating development inland to enhance access.
17 SMP, page I-10. In the urban environment (DR) designation, which
18 includes Silver Lake, the SMP encourages public access, both physical
19 and visual, to urban shorelines. SMP, page III-3, 4. The policy
20 extends to encouraging public access to water resources within
21 residential developments. SMP, page IV-48. Use regulations, which
22 are mandatory, specifically require public access. Subdivision plats
23 and planned unit developments are required to provide public access
24 easements or dedication when developments are upland of the
25 shorelines. SMP, page IV-49. All new permitted uses require
26 pedestrian access to the shoreline where feasible and where

1 maintenance is established. The access is to be designed so as to
2 prevent interference with the principle activity of the site. SMP,
3 page IV-7.

4 XV

5 The SMP provides that buildings within 200 feet of the ordinary
6 high water mark in excess of 35 feet in height will not obstruct the
7 view of a substantial number of residences on the areas adjoining such
8 shorelines. SMP, page IV-6. The proposed development is not
9 inconsistent with the provision.

10 XVI

11 A setback greater than the 35 feet for the unit closest to the
12 lake is not mandated by the SMP. No persuasive reasons have been
13 shown to require a greater setback from the shoreline by the proposed
14 development.

15 XVII

16 Any Conclusions of Law which should be deemed a Finding of Fact is
17 hereby adopted as such.

18 From these Findings the Board comes to these

19 CONCLUSIONS OF LAW

20 I

21 The instant substantial development permit is tested for
22 consistency with the approved Everett Shoreline Master Program and the
23 provisions of the Shorelines Management Act (SMA). RCW
24 90.58.140(2)(b).

25 II

26 The city's decision that the proposal was not a major action which
27

1 would result in a significant adverse impact upon the quality of the
2 environment was not shown to be clearly erroneous. We find no other
3 error under chapter 43.21C RCW or the guideline regulations.

4 III

5 The proposed substantial development is inconsistent with the SMP
6 and SMA because there is no provision for public access either to or
7 along the shoreline of Silver Lake, a public water body. The proposed
8 substantial development is neither water dependent or water related.
9 See SMP, page V-6. It is not a priority use identified in RCW
10 90.58.020.

11 RCW 90.58.020 states a policy which prefers uses which are unique
12 to or dependent upon the use of the state's shorelines. Where a
13 development is not dependent for its location upon the shoreline, it
14 may yet be located thereon if some corresponding public benefit is
15 provided. See Smith v. City of Seattle, SHB No. 158; Coughlin v. City
16 of Seattle, SHB No. 77-18; Skagit River League v. Skagit County, SHB
17 No. 228. The provision for public access upon the shorelines of the
18 state is such a corresponding benefit. RCW 90.58.020 encourages
19 developments and improvements which facilitate public access to the
20 shorelines which will provide an opportunity for substantial numbers
21 of people to enjoy the shorelines of the state.

22 The SMP evidences a strong mandate to provide public access to
23 shorelines from new upland developments. See Finding of Fact XIV.
24 The specific provision applicable in this case requires pedestrian
25 access where feasible, where maintenance is established, and where
designed to prevent interference with the principle activity at the

1 site. The city considered a condition of providing public access
2 along and parallel to the shoreline using the constraints of the
3 proposed development and concluded that public access was not
4 necessary at the site along or to the lake. It considered the
5 existing public access to the lake, the absence of an overall plan for
6 access along the entire lake, the private ownership of the site,
7 security to the project, city responsibilities, and the
8 bicycle/pedestrian path to be provided along the road as reasons to
9 delete the requirement for public access to the shoreline.

10 The shape of the lot, i.e., long and narrow, makes it less
11 feasible to require public access to the shoreline from the uplands.
12 However, the absence of any present use of a public access way along
13 the waterfront of the site does not render it unfeasible to provide
14 for it in the future. Provision for future public access need not be
15 more than an unimproved walkway along the water's edge, but some
16 provision should be made for access to the public water body to
17 fulfill the mandates of the SMP and SMA. While it may be a valid
18 concern that the proximity of the walkway to the units along the water
19 affects the privacy of those units, this concern could have been
20 addressed in the design of the development. To do otherwise would, in
21 effect, preclude public access by creating a development which could
22 not accommodate public access. In such instances, the development
23 would not be consistent with the SMP and SMA. The public access
24 suggested herein would render the proposed development consistent with
25 the public access concerns of the SMP and SMA.

IV

Except as noted in Finding of Fact III and X, and as discussed above, the proposed substantial development has not been shown to be inconsistent with the SMA and SMP, and in particular, the urban (RD) environment designation, the residential development policies, and the recreation elements of the SMP.

V

This matter should be remanded to the City of Everett to reissue the substantial development permit setting forth the full dimensions of the cabana, identifying the source, composition and volume of an appropriate fill material, and making provisions for public access along the water's edge of Silver Lake. With these amendments, the proposed development would become consistent with the SMA and SMP.

VI

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Board enters this

ORDER

The shoreline substantial development permit issued by the City of Everett is remanded to the city for further consideration and to reissue the substantial development permit setting forth the full dimensions of the cabana, identifying the source, composition and volume of an appropriate fill material, and making provisions for public access, either now or in the future, along the water's edge of Silver Lake. In all other respects the action of the City of Everett is affirmed.

DATED this 10th day of July, 1980.

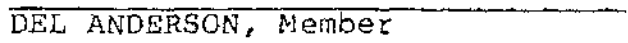
SHORELINES HEARINGS BOARD


NAT W. WASHINGTON, Chairman


DAVID AKANA, Member


WILLIAM A. JOHNSON, Member


ROBERT S. DERRICK, Member


DEL ANDERSON, Member

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 ANDERSON, Member, Concurring:
2

3 The uplands closest to the water exhibit a moist appearance and a
4 portion of the area is flooded by water during each year when the lake
5 rises. The public access required by this Order should be located
6 along a firm, dry pathway parallel to the shoreline. To accomplish
7 this, those condominium units closest to the shorelines (i.e., 35 feet
8 or so) which would preclude the access should be located elsewhere in
9 the development. For example, those units which must be deleted from
10 the first row could be incorporated into the structures located
11 farther inland. In this manner, public access would be provided and
12 the density of the development retained.
13

14 
15 DELMON ANDERSON, Member
16
17

18 FINAL FINDINGS OF FACT
CONCLUSIONS OF LAW AND ORDER